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| APPLICATION NO.                                    | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/765,324   | 01/26/2004  | John Feusner         | 03b-ISA             | 9945             |
| 7590   | 01/27/2006  |                      | EXAMINER            |                  |
| Carl D. Crowell<br>P.O. Box 923<br>Salem, OR 97308 |             |                      | RODRIGUEZ, JOSEPH C |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3653                |                  |

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/765,324

Applicant(s)

FEUSNER, JOHN

Examiner

Joseph C. Rodriguez

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ✓ 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ✓ 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/30/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election without traverse of claims 7-11 in the reply filed on 12/28/05 is acknowledged.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Here, Applicant claims sorting based on visually distinct patterns, but does not teach how this is accomplished within the specification. Consequently, Applicant claims are not properly enabled as the specification fails to teach how visual distinctions based on patterns are made.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "said boots" (2<sup>nd</sup> ln. from end). There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunson et al. ("Brunson")(US 2005/0170726 A1) in view of Weiss (US 4,473,373).

Brunson teaches that protective coverings including gowns, boots and masks can be color coded to indicate size as well as other functional or performance characteristics in the protecting coverings (Fig. 1-6; para. 20).

Brunson as set forth above thus teaches all that is claimed except for expressly teaching sorting the boots into separate locations by color. Weiss, however, teaches the sorting of a variety of protective coverings into separate locations by color (Fig. 1-5; col. 4, ln. 32-col. 5, ln. 41). Moreover, Weiss teaches that the use of colors facilitates sorting (col. 3, ln. 38-43). Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of

Brunson with a color sorting step as taught by Weiss as the protective coverings are likely to require further processing and color sorting facilitates this processing.

Claims 7-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiss (US 4,473,373) in view of Brunson et al. ("Brunson")(US 2005/0170726 A1).

Weiss teaches the sorting of a variety of protective coverings, including gowns, into separate locations by color (Fig. 1-5; col. 4, ln. 32-col. 5, ln. 41)

Weiss as set forth above thus teaches all that is claimed except for expressly teaching the protective clothing including a boot size coded by color. Brunson, however, expressly teaches that protective coverings include gowns as well as boots and masks (Fig. 1-6; para. 20). Moreover, Brunson teaches that color may be used to indicate the size as well as other functional or performance characteristics in the protecting coverings (Id.). Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Weiss to color sort the boots as well as the other protective coverings.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brunson et al. ("Brunson")(US 2005/0170726 A1) and Weiss (US 4,473,373) as applied to claims 7-9 and 11 above, and further in view of Lawandy (US 6,874,639 B2).

Brunson and Weiss as set forth above teach all that is claimed except for expressly teaching sorting based on a pattern. Applicant, however, as discussed above has not sufficiently taught how this is accomplished (e.g., can a bar code or color

be considered a pattern), thus it is not clear what type of pattern sorting is being claimed. With regards to object sorting, Lawandy teaches that a marking system may be used to create unique *patterns* on items to facilitate sorting (Abstract). Further, this type of pattern sorting can be regarded as an art recognized equivalent to color sorting in the laundry arts (col. 3, ln. 5-61 teaching that coding can be used high-speed sorting for objects such as laundry). Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the invention of Brunson and Weiss as taught above as pattern sorting can be regarded as an art recognized equivalent to color sorting.

### ***Conclusion***

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Joseph C Rodriguez** whose telephone number is **571-272-6942** (M-F, 9 am – 6 pm, EST).

The **Official** fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

The examiner's **UNOFFICIAL Personal fax number** is **571-273-6942**.

Further, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private PMR or Public PAIR. Status information for unpublished applications is available through Private PMR only.

For more information about the PAIR system, see

<http://pair-direct.uspto.gov>

Should you have questions on access to the Private PMR system, contact the Electronic Business Center (EBC) at **866-217-9197** (Toll Free).

Alternatively, inquiries of a general nature or relating to the status of this application or proceeding can also be directed to the **Receptionist** whose telephone number is **571-272-6584** or to the Supervisory Examiner, Kathy Matecki, **571-272-6951**.

Signed by Examiner Joseph Rodriguez

Jcr

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January 20, 2006

A handwritten signature in black ink, appearing to be 'JR' followed by a long, sweeping horizontal line that extends to the right.